Supreme Court, U.S.
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No. 95-1291

In The

Supreme Court of the United States

October Term, 1995

DIANN HARRIS CARTER, *et al.*,

Petitioners,

vs.

STANLEY MROZOWSKI, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Pennsylvania

RESPONDENTS' BRIEF IN OPPOSITION

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STATEMENT OF THE CASE

The facts giving rise to this case date back to the 1989-90 decision of the Dauphin County Mental Health and Mental Retardation Program to not renew its contract with the Rosalie G. Handler Center (the "Handler Center"). Dauphin County is a political subdivision of Pennsylvania. Under this contract, the Handler Center was providing The Dauphin County Mental Health and Mental Retardation Program with case management, partial hospitalization, and out-patient services. During this time, Petitioners all worked at the Handler Center. Through numerous legal actions, Petitioners attempted to force a renewal of this contract. These attempts were all unsuccessful and the contract was awarded to another entity.

Thereafter, Petitioners initiated the present action on June 3, 1992, by the filing of a Complaint in the Court of Common Pleas of Dauphin County, Pennsylvania. An Amended Complaint (the first Amended Complaint) was then filed on June 4, 1992. The first Amended Complaint merely removed one of the named Plaintiffs from the original Complaint. On July 7, 1992 Preliminary Objections were filed to the first Amended Complaint on behalf of all Defendants. Briefs by the parties were then filed and oral argument was held on December 2, 1992, before the Honorable Judges Morgan, Turgeon, and Kleinfelter. On September 20, 1993 an Order and Opinion was issued by the Honorable Joseph H. Kleinfelter which sustained the Respondents' demurrers to all counts in the Complaint, while also granting the Petitioners leave to file an amended Complaint for purposes of correcting the deficiencies noted by the court. A copy of said September 20, 1993 Opinion and Order is attached to Respondents' Brief in Opposition filed by Dauphin County MH/MR Case Management Unit, Dauphin County Counseling Center, Gantt, Bard, Minnix, Loomis, Resinger, Dunlap and Urban.

On October 12, 1993, the Petitioners filed a second Amended Complaint. On October 29, 1993, the Respondents filed additional Preliminary Objections to the second Amended Complaint. Again, briefs were submitted and oral argument was presented before the Honorable Judges Turgeon, Kleinfelter, and Hoover. On May 10, 1994 an Order and Opinion was issued by the Honorable Todd A. Hoover in which the court held that the Petitioners had failed to correct the deficiencies noted in the September 20, 1993 Opinion and had failed to state a cause of action against any of the Respondents on any count. Accordingly, the court granted the Respondents' additional demurrers and dismissed the second Amended Complaint with prejudice. A copy of the May 10, 1994 Opinion and Order is attached to the Petition at Appendix C.

Petitioners then appealed this dismissal to Pennsylvania's Commonwealth Court. On June 2, 1995 the Commonwealth Court issued an Order and Opinion affirming the dismissal by the Court of Common Pleas. *See* Opinion and Order of the Commonwealth Court at Appendix B of the Petition For Writ of Certiorari. Next, Petitioners filed a Petition for Allowance of Appeal in the Supreme Court of Pennsylvania, which denied the petition on November 16, 1995. *See* Order of the Supreme Court of Pennsylvania at Appendix A of the Petition For Writ of Certiorari. Thereafter, Petitioners filed the instant Petition For Writ of Certiorari with this Court on February 14, 1996.

REASONS FOR DENYING THE WRIT

I.

THE COURTS OF PENNSYLVANIA MAY PROPERLY APPLY THEIR OWN NEUTRAL AND NON-DISCRIMINATORY PLEADING RULES TO ACTIONS BROUGHT IN STATE COURT BASED UPON 42 U.S.C. § 1983.

Petitioners urge this Court to hold that Pennsylvania's pleading rules are preempted under the Supremacy Clause in 42 U.S.C. § 1983 cases brought in Pennsylvania state courts. In effect, Petitioners propose that the state courts of Pennsylvania[1] be required to abandon their fact pleading standard and adopt the federal notice pleading standards of Federal Rule of Civil Procedure. Such a proposition is contrary to the decisions of this Court and violative of the basic tenants of our federalist form of government. Therefore, this Court should deny the Petition for Writ of Certiorari.

As with many actions grounded upon federal law, the courts of the Commonwealth of Pennsylvania have concurrent jurisdiction over claims based upon 42 U.S.C. § 1983. It has long been established that where an action founded upon federal law is brought in a state court, the law of the state controls in matters of practice and procedure, unless a federal statute provides otherwise. *See Felder v. Casey*, 487 U.S. 131, 101 L. Ed. 2d 123,

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1. Although the narrow issue focuses on Pennsylvania's fact pleading rules and procedure, Petitioners theory, if accepted, would undoubtedly call into question all state procedural rules which are not in total harmony with the Federal Rules of Civil Procedure. Further, such a theory would result in state courts applying different procedural requirements to different counts of the same complaint, dependent on whether the count was based upon federal or state law.

108 S. Ct. 2302 (1988). Moreover, in such cases, the general rule is that the states are free to adopt such practices and procedures as they deem fit. As this Court recently explained:

> The general rule is "bottomed deeply in belief in the importance of state control of state procedure, is that federal law takes the state courts as it finds them." The states thus have great latitude to establish the structure and jurisdiction of their courts. In addition, States may apply their own neutral rules to federal claims, unless those rules are pre-empted by federal law. These principles are fundamental to a system of federalism in which the state courts share responsibility for the application and enforcement of federal law.

Howlett v. Rose, 496 U.S. 356, 372, 110 L. Ed. 2d 332, 351, 110 S. Ct. 2430 (1990) (citations omitted). Of course, this general rule is not without limitation: "Federal law takes state courts as it finds them only insofar as those courts employ rules that do not impose unnecessary burdens upon rights of recovery authorized by federal law." *Felder v. Casey*, 487 U.S. 131, 101 L. Ed. 2d 123, 108 S. Ct. 2302 (1988) (quoting, *Brown v. Western R. Co. of Alabama*, 338 U.S. at 298-299). To this end, state statutes that burden federal substantive rights of recovery, that are defendant specific, or discriminate against federal rights will be preempted. *See generally*, *Howlett v. Rose*, 496 U.S. 356, 372, 110 L. Ed. 2d 332, 110 S. Ct. 2430 (1990); *Felder v. Casey*, 487 U.S. 131, 101 L. Ed. 2d 123, 108 S. Ct. 2302 (1988). However, Pennsylvania's liberal fact pleading standards are neutral and add no additional conditions to recovery. As such, Pennsylvania's pleading rules clearly fall within the unassailable right of Pennsylvania to establish rules of procedure governing litigation in its own courts.

Pleadings in Pennsylvania, as in other fact pleading states, serve not only to put opponents on notice, but also to form the issues in the action and make possible, at a preliminary stage, the disposition of meritless or frivolous claims. Goodrich-Amram 2d § 1019:2. Pennsylvania Rule of Civil Procedure 1019 sets forth the necessary requirements of a complaint. This rule requires, *inter alia*, that "The *material facts* on which a cause of action is based shall be stated in concise and summary form." Pa. R. C. P. 1019(a)(emphasis supplied).[2] Material facts are only those which are essential to show the liability which is sought to be enforced. *General State Authority v. Sutter Corp.*, 44 Cmwlth Ct. 156, 403 A.2d 1022 (1979). Accordingly, a complaint is required to be sufficiently specific in the presentation of fact so that a defendant is informed with accuracy of the basis upon which recovery is sought. *Philadelphia County Intermediate Unit v. Department of Education*, 60 Pa. Cmwlth 546, 432 A.2d 1121 (1981). While this rule does require fact pleading rather than notice pleading, meticulous specificity is not required. *Local No. 163, International Union of Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America v. Watkins*, 417 Pa. 120, 207 A.2d 776 (1956). Moreover, Pennsylvania Rules of Civil Procedure are always to be liberally construed. Pa. R. C. P. 126. Nevertheless, where a complaint fails to meet these pleading requirements Pa. R. C. P. 1028(a)(4) provides defendants with redress by preliminary objection in the nature of a demurrer.

Pennsylvania courts, in considering preliminary objections to a complaint in the nature of a demurrer, again apply a liberal standard. In ruling on demurrers, the courts, though not admitting conclusions of law or statements of opinions, admit all

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2. If a claimant lacks sufficient facts to set forth a valid complaint, the action may be commenced by writ and the information obtained through discovery. Goodrich-Amram 2d §1019(a)10.

well pleaded material facts for the purpose of determining whether such facts, if proven at trial, would sustain the claims made. *Mazzagatti v. Everingham by Everingham*, 512 Pa. 266, 516 A.2d 672 (1986). Likewise, Pennsylvania courts, also accept all inferences fairly deductible from such facts *in favor of the pleader. Wicks v. Milizococ Builders Inc.*, 503 Pa. 614, 623, 470 A.2d 86, 91 (1983) (emphasis added.).

Accordingly, in the present dispute, the trial judge, resolving any doubt in favor of the Petitioners, nevertheless, found that their Complaint failed to set forth the necessary facts to support any of the fifteen counts contained therein. In so holding, however, the trial court, in its September 20,1993 Opinion, provided Petitioners with specific and extensive guidance on what additional facts were needed to remedy the defects. Despite this direction, the Petitioners added mere legal rhetoric, leading the trial court to find that their Second Amended Complaint still lacked the factual specificity required under Pennsylvania pleading rules. Based upon the Petitioners failure to conform the Second Amended Complaint in accordance with the September 20, 1993 Order, the trial court dismissed the Complaint with prejudice. This decision was affirmed on appeal by the Pennsylvania Commonwealth court by Order dated June 2, 1995.

Despite the liberal standard of Pennsylvania's pleading rules and procedures, Petitioners argue that these rules are preempted in 1983 actions under the Supremacy Clause. In support this contention Petitioners rely heavily on the holding in *Brown v. Western Railway of Alabama*, 338 U.S. 294, 94 L. Ed. 100, 70 S. Ct. 105 (1949). In *Brown*, the plaintiff filed a complaint in Georgia state court asserting rights under the Federal Employer's Liability Act, to which the defendant filed a general demurrer. In reviewing the defendant's demurrer, the Georgia court, following local practice, construed the pleadings most strongly against the pleader. *Brown*, 338 U.S. at 295. In

reversing the Georgia court, this Court first reiterated the general rule that state courts are free to follow their own rules of procedure and practice. However, the Court reasoned that local must fall where they act to detract from "substantive" rights. *Id.* at 296. The Court then concluded that the Georgia practice of construing pleadings against the plaintiff "operated to detract from substantive rights' granted by Congress in FELA cases. *Id.* The present situation is clearly distinguishable from *Brown* as the Pennsylvania standards of pleading cannot reasonably be characterized as infringing on Petitioners' federally protected rights.

Unlike the pleading practices addressed in *Brown*, which construed the complaint "most strongly against the pleader", Pennsylvania practice, as noted above, is exactly the opposite. Pennsylvania neither requires meticulous pleading nor construes pleadings against the plaintiff. Pennsylvania requires only that material facts be plead and construes the complaint, and all reasonable inferences therefrom, *in favor of the pleader*. Furthermore, Petitioners, unlike those in *Brown*, were provided *two* opportunities to amend their Complaint so as to add sufficient factual allegations and were also provided with specific and extensive directives on what facts were required to cure the Complaint. Clearly Pennsylvania's pleading rules and practice are starkly distinguishable from the draconian pleading standard applied by the Georgia court in *Brown*. The practice followed by the trial court, consistent with Pennsylvania fact pleading practice, merely provides adequate processes by which frivolous or unmeritorious claims may be quickly resoled. As such, it cannot realistically be argued that Pennsylvania procedure or practice infringed upon any of the Petitioners' substantive rights.

Likewise, Petitioners' reliance on *Felder* is also misplaced. In *Felder*, this Court held that a Wisconsin state notice of claim statute was preempted by federal law. The notice statute

provided that before a suit could be brought in state court against a governmental entity or an officer thereof, the plaintiff must notify the governmental defendant of the circumstances giving rise to the claim, the amount of the claim and his or her intent to hold the named defendant liable. The statute further required, that in order to afford the defendant an opportunity to consider the requested relief, the claimant must refrain from filing suit for 120 days after providing such notice and that failure to comply with these requirements constituted grounds for dismissal of the action. Finally, the statute required the claimant to bring their action within six months of receiving notice that their claim had been disallowed. *Felder*, 487 U.S. at 134.

In analyzing whether the Wisconsin statute was preempted, this Court again reiterated the general rule that state procedural rules apply to actions brought in state court: "No one disputes the general and unassailable proposition relied upon by the Wisconsin Supreme Court below that States may establish the rules of procedure governing litigation in their own courts." *Id.* at 138. Nevertheless, after a thorough examination of the statute, this Court found it failing in several respects. This Court found that the statute undermined the plaintiff's federal right by conditioning the right of recovery against governmental defendants on giving such defendants notice so as to minimize governmental liability, a rule manifestly inconsistent with the purpose of § 1983 actions. This Court also determined that the statute was not a neutral law of procedure, but discriminated against the plaintiff's federal right, as state tort victims could bring similar state intentional tort actions within two years, while the civil rights claimant was permitted only four months. In sum, this Court in *Felder* found that the statute was not a neutral law of procedure but was defendant specific, outcome-determinative and burdened plaintiff's substantive federal right. *Id.* at 141.

Unlike *Felder*, the Pennsylvania pleading rules and practice

are neutral, nondiscriminatory and are applicable to all parties, whether governmental or private, and to all actions, whether founded upon federal or state law. Further, Pennsylvania's pleading rules require only that the plaintiff set forth the material facts required to establish the causes of action and do not add any condition or burden upon claimants, as the Wisconsin notice statute did. Accordingly, the *Felder* decision lends no support to Petitioners proposition that Pennsylvania's pleading rules are preempted. Indeed, Pennsylvania's neutral rules of practice and procedure are the very types of practice rules which the Court in *Felder* acknowledged to be within the unassailable right of state courts to apply in actions brought within their courts.

Finally, despite numerous citations thereto, Petitioners proposition has no support in this Court's decision in *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, __U.S.__, 122 L. Ed. 2d 517, 113 S. Ct. 1160 (1993). In *Leatherman*, this Court rejected the practice adopted by the federal courts in most Circuits of applying a "heightened pleading requirement" to complaints for municipality liability under 42 U.S.C. § 1983. This Court concluded that such actions were controlled by Fed. R. Civ. P. 8(a), requiring only notice. The issue addressed in *Leatherman* involved the application and interpretation of the Federal Rules of Civil Procedure. Stated by this Court, the issue was "whether a federal court could apply a "heightened pleading standard" — more stringent than the usual pleading requirements of Rule 8(a) of the Federal Rules of Civil Procedure — in civil rights cases alleging municipal liability . . . under 42 U.S.C. § 1983." *Leatherman*, 122 L. Ed. 2d at 522. Concluding that the federal courts are constrained by the Federal Rules of Civil Procedure, as codified, this Court rejected application of a different pleading standard in such cases, until that time that the federal rules are amended.

As Petitioners chose to file their action in state court, both

the Federal Rules of Civil Procedure and *Leatherman* are irrelevant. Indeed, to the extent that *Leatherman* does provide any guidance in this matter, it would clearly seem to direct a position contra to Petitioners' theory in this case. In *Leatherman*, albeit in dicta, this Court stated:

> Perhaps if [the Federal Civil Procedure] Rules 8 and 9 were rewritten today, claims against municipalities under § 1983 might be subjected to the added specificity of Rule 9(b). But that is a result which must be obtained by the process of amending the Federal Rules, not by judicial interpretation. In the absence of such a amendment, federal courts and litigants must rely on summary judgment and control of discovery to weed out unmeritorious claims sooner rather than later.

122 L. Ed. 2d at 524.

In so reasoning, this Court impliedly endorsed an amendment to the federal pleading rules. Moreover, this illustrates that Pennsylvania's pleading rules, requiring somewhat more specificity than that required under federal notice pleading, do not act to burden a "substantive" federal right. Indeed, one of the primary rationales supporting Pennsylvania's fact pleading standards, as noted supra, is to permit the courts to begin to weed out such unmeritorious claims. Merely because Pennsylvania has adopted a fact pleading standard in which to accomplish this goal cannot, therefore, be characterized as burdening or detracting from a federal substantive right.

In conclusion, Petitioners' proposition that Pennsylvania

must abandon its standard pleading requirements in cases based upon 42 U.S.C. § 1983 must fail. This Court has consistently held that states are free to implement neutral, nondiscriminatory rules of procedure applicable to cases brought in their courts. The Pennsylvania pleading rules are equally applicable to all actions filed in Pennsylvania state courts, whether the action is based upon state or federal law, and all parties add no additional requirements on recovery. As such, Pennsylvania's pleading rules cannot be held to burden or detract from Petitioners' substantive rights afforded under 42 U.S.C. § 1983, and, therefore, are not preempted and Petitioners' Petition for Writ should be denied.

CONCLUSION

For the reasons set forth above, Respondents respectfully request that this Honorable Court deny the Petition For Writ of Certiorari.

Respectfully submitted,

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